

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 13, 2002

To: The Commission
(Meeting of May 16, 2002)

From: Bill Julian
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 530 (Sher)** – This bill addresses the administration of ratepayer-provided public goods charge (PGC) funds by the California Energy Commission (CEC). CEC administration extends to two PGC-funded elements: public energy research (\$62.5 million annually) and ratepayer support for renewable energy projects (\$135 million annually). This bill addresses administrative issues in both areas.

As Amended April 29, 2002

Recommendation: Support with amendments.

Summary: This bill addresses the administration of ratepayer-provided public goods charge (PGC) funds by the California Energy Commission (CEC). CEC administration extends to two PGC-funded elements: public energy research (\$62.5 million annually) and ratepayer support for renewable energy projects (\$135 million annually). This bill addresses administrative issues in both areas.

The provisions of this bill were originally contained in SB 532, which is presently pending in policy committee in the Assembly, and were placed in this bill by amendments dated March 18, 2002. SB 530 is pending in the Assembly fiscal committee. Identical language was also placed in SB 1524, which is pending in Senate fiscal committee.

Analysis: Sections 12-14 of the bill address the renewables PGC-funded programs at the CEC. Sections 2 through 10 address the Public Interest Energy Research (PIER) programs.

1. Renewable Programs Pursuant to SB 995/AB 1194 ratepayers provide \$135 million per year statewide in PGC funds to support renewable energy development. In its current form the bill states the Legislature's intent that 17 % of California's energy be provided by renewable facilities by 2006. In this regard it consistent with but more aggressive than SB 532, which proposes 15 % by 2007 and 20 % by 2010. Governor Davis has announced his support for SB 532 and its 20 % in 2010 goal.

SB 530 proposes to codify policies and funding allocations among program elements contained in a 2001 report by the CEC "Investing in Renewable Electricity Generation in California." SEC. 12, amending Public Utilities Code (PU Code) §383.5. The funding allocations proposed in the statute are:

2. 20% for "programs that are designed to improve the competitiveness of existing instate renewable electricity generation facilities, further subdivided between "first tier technologies" (biomass and solar electric) and "second tier" (wind technologies); this takes the form of a "production credit" paid for generation on top of the sale price received;
3. 50% is allocated to programs that foster development of new instate renewable electricity generation facilities pursuant to a competitive solicitation process; this also may take the form of production credit for energy output;
4. 17.5% is to be used for "a multi-year consumer based program to foster the development of emerging renewable technologies in distributed generation applications," primarily fuel cells, solar PV and small wind;
5. 10% is to be used for customer credits for purchases of the "nonenergy attributes of ... electricity produced by instate renewable electricity generation facilities; " 90 % of these funds are to go to residential and small commercial customers;
6. 2.5% is to be used to "promote renewable energy... and to help develop a consumer market...."

These allocations could be modified without further legislative action. Proposed PU Code §383.5(i).

Concerns have been raised that these allocations may not represent the optimal use of ratepayer-provided PGC funds. Most existing renewable projects are "qualifying facilities" (Qfs) that have long-term contracts with utilities that provide a significant price premium; a production credit subsidy on top of the premium price may appear redundant. Some new renewable projects awarded production credits as successful bidders in the CEC auction have not begun construction and may not be built, tying up funds which might be applied to other projects. SB 530 proposes that projects awarded production credits be paid over a five (5) year period after they begin production, which must occur not more than four (4) years after the date of the award unless the CEC extends the time. No credits would be paid after nine (9) years following the auction. This timeline may not be consistent with a steady progression from status quo to 20 % by 2010.

OGA recommends that SB 530 be amended to provide concrete mechanisms that result in expenditure of the ratepayer-provided PGC funds in a manner that most effectively facilitates achieving the objectives of the renewable portfolio requirement for utilities and other load serving entities to whom the requirement applies – the 20 % in 2010 standard. This would mean obtaining maximum leverage from the substantial but limited pot of PGC dollars.

One approach would be to conduct a competitive process for PGC allocation that is also directly linked to long-term contracts with utilities that would commit them to purchasing the output as an element of meeting their renewable content objective. This “unitary auction” would increase the likelihood that the winning projects would be financed and built on a timely basis and would make best use of PGC funds to provide ratepayers with output from new renewable facilities. This approach is under consideration by stakeholders in the context of SB 532. It is not necessarily inconsistent with the statutory allocation categories proposed in SB 530, although it does suggest that the proportion of funds allocated to new projects might be increased.

The outcome of the unitary auction would include an obligation on the part of the utility to contract with the winning bidders. The implications of this outcome for the CPUC’s procurement process and for meeting the renewable content requirement are subjects of discussion among the stakeholders in the context of SB 532. The implications for rates and ratepayers suggest that the unitary auction be conducted under the auspices of the CPUC.

7. Research Programs The Public Interest Energy Research (PIER) program utilizes \$62.5 million per year in ratepayer-provided funds for energy research and development projects. The substantive changes to existing law proposed by this bill affect the CEC’s administrative flexibility and accountability through the following devices:
 - a) Exemptions from the Public Contract Code and Government Code provisions requiring General Services approval contractor qualifications and competitive bid procedures if a grant or contract “if the Commission determines that it is necessary to assist the development of a product that has significant commercial potential and can help mitigate potential energy supply shortfalls...” (§4 of the bill amending Public Resources Code §25620.3)
 - b) Delegation to another public entity of its authority for a portion of a program, including the authority to award reasonable sole and single source contracts. (Id.)

- c) Delegation to the CEC executive director of approval authority for awards of up to \$1 million. (Id.)
- d) The creation of a panel of independent experts to conduct a comprehensive evaluation of the program. (Section 7 of the bill adding Public Resources Code Section 25620.9)

OGA has no recommendation on these provisions of the bill.

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Date: May 13, 2002

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Attachment

BILL LANGUAGE

BILL NUMBER: SB 530 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 29, 2002
AMENDED IN ASSEMBLY APRIL 18, 2002
AMENDED IN ASSEMBLY APRIL 3, 2002
AMENDED IN ASSEMBLY MARCH 18, 2002
AMENDED IN SENATE APRIL 16, 2001

INTRODUCED BY Senator Sher
~~—(Coauthor: Assembly Member Wayne)—~~
(Principal coauthor: Senator Bowen)
(Principal coauthor: Assembly Member Wayne)

FEBRUARY 22, 2001

An act to amend Sections 25619, 25620, 25620.1, 25620.2, 25620.3, 25620.5, 25620.7, 25648, 25648.4, and 25684 of, and to add and repeal Section 25620.9 of, the Public Resources Code, and to amend Sections 381, 383.5, 394.25, and 445 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 530, as amended, Sher. Renewable ~~Energy~~
energy .

(1) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to develop, implement, and administer the Public Interest Research, Development, and Demonstration Program. Existing law requires the program to consist of a balanced portfolio that addresses California's energy and environmental needs, technology opportunities, and system reliability. Existing law, until January 1, 2000, required the Energy Commission to adopt regulations to ensure the success of electricity industry restructuring in the transition to a new market structure and to implement the program. Existing law authorizes the Energy Commission to solicit applications for awards, using a sealed competitive bid, competitive negotiation process, multiparty agreement, single source, or sole source method.

This bill would require the Energy Commission, not later than 6 months after the enactment of this bill to designate a panel of independent experts with special expertise in public interest research, development, and demonstration programs to conduct an evaluation of the program and to submit a preliminary report to the Governor and the Legislature not later than 18 months after the enactment of this bill, and a final report not later than 30 months after the enactment of this bill.

Existing law authorizes the Energy Commission to solicit applications for awards and specifies criteria for funding projects under the program .

The bill would authorize the Energy Commission to adopt regulations governing the administration of the program, in accordance with specified procedures, until January 1, 2007.

The bill would make technical and conforming changes.

(2) Existing law requires the Energy Commission to develop a grant

program to offset a portion of the cost of an eligible solar energy system, as defined. Existing law requires that eligible solar energy systems for electricity generation be listed by a certified testing agency. Assembly Bill 48 of the 2001-02 2nd Extraordinary Session amends the certification requirement to provide that in the absence of certification, major components of eligible solar energy systems for electricity generation comply with specifications adopted by the Energy Commission.

This bill would adopt these changes on an urgency basis, to take effect immediately.

~~—(2)—~~

(3) Existing law requires the Public Utilities Commission (commission) to order specified electrical corporations to collect and spend certain funds for cost-effective energy efficiency and conservation activities, public interest research and development, and development of renewable resources technology. Existing law provides that the commission's authority to collect funds for in-state operation and development of existing and new and emerging renewable resource technologies becomes inoperative on March 31, 2002.

This bill would require ~~the San Diego Gas and Electric Company to spend no less than \$13,900,000 per year, the Southern California Edison Company to spend no less than \$65,300,000 per year, and the Pacific Gas and Electric Company to spend no less than \$55,800,000 per year, for the years 2002 to 2011, inclusive, to accomplish~~ the funding of in-state operation and development of existing and new and emerging renewable resources technologies to be made available pursuant to a specified provision of existing law. The bill would delete the provision making the commission's authority to collect funds for these purposes inoperative on March 31, 2002. The bill would make additional technical, nonsubstantive changes.

~~—(3)—~~

(4) Existing law defines "in-state renewable electricity generation technology" for the purposes of these provisions. Existing law defines, for the purposes of these provisions, "report" as the Policy Report on AB 1890 Renewables Funding (March 1997, Publication Number P500-97-002) submitted to the Legislature by the Energy Commission.

This bill would define "in-state renewable electricity generation facility" instead of "in-state renewable electricity generation technology" and would modify the existing definition to no longer only include facilities that were placed in operation after September 26, 1996. The bill would include within the definition of "in-state renewable electricity generation facility" a facility using ocean thermal, tidal current, and wave energy generation technologies, located within the state's territorial boundaries. The bill would exclude from the existing definition, waste tire and municipal solid waste generation technologies. The bill would define "nonenergy attributes of renewable electricity" and "energy attributes of renewable electricity." The bill would provide that on and after January 1, 2002, "report," for the purposes of these provisions, means the report entitled "Investing in Renewable Electricity Generation in California" (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the Energy Commission.

~~—(4)—~~

(5) Existing law requires 45% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$243,000,000, to be used for

programs that are designed to improve the competitiveness of existing in-state renewable electricity generation technology facilities. Existing law requires 30% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$162,000,000, to be used for programs that are designed to foster the development of new in-state renewable electricity generation technology facilities. Existing law requires 10% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$54,000,000, to be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. Existing law requires 15% of the money collected for in-state operation and development of existing and new and emerging renewable resources technologies, up to \$81,000,000, to be used for programs designed to provide customer credits for purchases of renewable energy produced by certified energy providers, to disseminate information regarding renewable energy technologies, to promote purchases of renewable energy, to help develop a consumer market for renewable energy, and to help develop a consumer market for renewable energy technologies.

This bill would instead require 20% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation facilities. The bill would instead require 50% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for programs that are designed to foster the development of new in-state renewable electricity generation facilities. The bill would instead require 17.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. The bill would instead require 10% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company, the Southern California Edison Company, and the Pacific Gas and Electric Company, to be used to provide customer credits for purchases of ~~renewable energy produced by certified generating facilities~~ *the nonenergy attributes of renewable electricity produced by in-state renewable electricity generation facilities* . The bill would require 2.5% of the funds collected to accomplish the funding of in-state operation and development of existing and new and emerging renewable resources technologies, to be spent by the San Diego Gas and Electric Company and the Pacific Gas and Electric Company, to be used to promote renewable energy and to disseminate information on renewable energy technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

—(5)—

(6) Existing law provides for the Renewable Resource Trust

Fund in the State Treasury and establishes certain accounts in the Renewable Resource Trust Fund, including the Customer-Side Renewable Resource Purchases Account. Existing law provides that the money in the fund and the accounts are continuously appropriated to the Energy Commission. Existing law provides that unallocated funds in any account shall remain in the respective account until December 31, 2001.

This bill would instead establish the Customer-Credit Renewable Resources Account and the Renewable Resources Consumer Education Account. The bill would require that unallocated funds in any account remain in the respective account until the Energy Commission submits a specified report.

(7) *This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~ 2/3 .

Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 25619 of the Public Resources Code, as added by Chapter 537 of the Statutes of 2000 Regular Session, is amended to read:*

25619. (a) The commission shall develop a grant program to offset a portion of the cost of eligible solar energy systems. The goals of the program are all of the following:

(1) To make solar energy systems cost competitive with alternate forms of energy.

(2) To provide support for electricity storage capabilities in solar electric applications to facilitate enhanced reliability in the event of a power outage.

(3) To encourage the purchase by California residents of California-made solar systems.

(b) (1) The grant for an eligible solar energy system shall be based on either the performance of, or the type of, the solar energy system, as the commission determines, and the amount of the grant shall not exceed seven hundred fifty dollars (\$750). Except as provided in paragraph (2), if a grant is awarded pursuant to this section for an eligible solar energy system that produces electricity, no grant shall be made for that system from any other grant program administered by the commission.

(2) An applicant who receives a grant for a photovoltaic solar energy system from another program administered by the commission, may also receive a grant for that system pursuant to this section, if all of the following conditions are met:

(A) The system will accomplish the purpose specified in paragraph (3) of subdivision (a).

(B) The system is an eligible solar energy system.

(C) The system includes adequate battery storage, as determined by the commission.

(c) Purchasers, sellers, owner-builders, or owner-developers of the solar energy system may apply for a grant under this section. An owner-builder or owner-developer of a new single-family dwelling on which a system is installed may elect not to apply for a grant on a solar energy system installed on a new single-family dwelling. If an owner-builder or owner-developer of a new single-family dwelling on which a system is installed elects not to apply for the grant for a solar energy system, the purchaser of the dwelling may apply for the grant. The seller, owner-builder, or owner-developer shall reflect

the amount of the grant received on the purchaser's bill of sale.

(d) The commission shall develop and adopt guidelines to provide appropriate consumer protection under the grant program and to govern other aspects of the grant program. The guidelines shall be adopted at a publicly noticed meeting and all interested parties shall be provided an opportunity to comment either orally or in writing. Not less than 30 days notice shall be provided for the public meeting. Subsequent substantive changes to adopted guidelines shall be adopted by the commission at a public meeting upon written notice to the public of not less than 10 days. The guidelines adopted pursuant to this subdivision are not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(e) The commission shall require installers of solar energy systems funded through grants under this section to be properly licensed to do so by the Contractors' State License Board. This requirement does not apply to the owner of a single-family dwelling who installs a solar energy system on his or her single-family dwelling.

(f) The award of a grant pursuant to this section is subject to appeal to the commission upon a showing that factors other than those described in the guidelines adopted by the commission were applied in making the award. Any action taken by an applicant to apply for, or become or remain eligible to receive an award, including satisfying conditions specified by the commission, does not constitute the rendering of goods, services, or a direct benefit to the commission. Awards made pursuant to this section are not subject to any repayment requirements of Chapter 7.4 (commencing with Section 25645).

(g) For the purposes of this section, the following terms have the following meanings:

(1) "Cost" includes equipment, installation charges, and all components necessary to carry out the intended use of the system if those components are an integral part of the system. In the case of a system that is leased, "cost" means the principal recovery portion of all lease payments scheduled to be made during the full term of the lease, which is the cost incurred by the taxpayer in acquiring the solar energy system, excluding interest charges and maintenance expenses.

(2) (A) "Eligible solar energy system" means any new, previously unused solar energy device whose primary purpose is to provide for the collection, conversion, transfer, distribution, storage, or control of solar energy for water heating or electricity generation, and that meets applicable standards and requirements imposed by state and local permitting authorities, including, but not limited to, the National Electric Code. Eligible solar energy systems for water heating purposes shall be certified by the Solar Rating and Certification Corporation (SRCC) or any other nationally recognized certification agency that certifies complete systems. Major components of eligible solar energy systems for electricity generation shall be listed by a certified testing agency, such as the Underwriters Laboratory. *In the absence of certification, major components of eligible solar energy systems for electricity generation shall comply with specifications adopted by the commission.*

(B) "Eligible solar energy system" does not include any of the following:

(i) Wind energy devices that produce electricity or provide mechanical work.

(ii) Additions to or augmentation of existing solar energy systems.

(iii) A device that produces electricity for a structure unless the device is interconnected and operates in parallel with the electric grid.

(C) Eligible solar energy systems shall have a warranty of not less than three years.

(3) "Installed" means placed in a functionally operative state.

(h) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 1.5. Section 25620 of the Public Resources Code is amended to read:

25620. The Legislature hereby finds and declares all of the following:

(a) It is in the best interests of the people of this state that the quality of life of its citizens be improved by providing environmentally sound, safe, reliable, and affordable energy services and products.

(b) To improve the quality of life of this state's citizens, it is proper and appropriate for the state to undertake public interest energy research, development, and demonstration projects that are not adequately provided for by competitive and regulated energy markets.

(c) Public interest energy research, demonstration, and development projects should advance energy science or technologies of value to California citizens and should be consistent with the policies of Section 399.7 of the Public Utilities Code.

(d) The commission should use its adopted "Five-Year Investment Plan, 2002 Through 2006 for the Public Interest Energy Research (PIER) Program (Volume 1)" (P600-01-004a, March 1, 2001) to ensure compliance with the policies and provisions of Section 399.7 of the Public Utilities Code in the administration of public interest energy research, demonstration, and development programs.

SEC. 2. Section 25620.1 of the Public Resources Code is amended to read:

25620.1. (a) The commission shall develop, implement, and administer the Public Interest Research, Development, and Demonstration Program that is hereby created. The program shall include a full range of research, development, and demonstration activities that, as determined by the commission, are not adequately provided for by competitive and regulated markets.

(b) The goal of the program is to provide California and its citizens with a clean, affordable, reliable, and resilient supply of energy, where customers have energy choices that can meet their individual needs, California's industries can grow and prosper, and California is established as the world leader in energy efficiency and clean, advanced energy technologies and systems. To meet this goal, the commission shall adopt a portfolio approach for the program to effectively balance the risks, benefits, and time horizons for various activities and investments that will provide tangible benefits for California electricity ratepayers. The portfolio shall emphasize innovative energy supply and end-use technologies, focusing on their reliability, affordability, and environmental attributes. The portfolio may also include projects that have the potential to enhance the reliability, peaking power, and storage capabilities of renewable energy. The priorities for funding projects under the program shall be based upon at least one of the following:

(1) The potential for exploiting emerging opportunities.

(2) The potential for mitigating important energy system problems.

(3) The potential for expanding upon the benefits derived from

prior projects funded by the program.

(c) The commission shall review the portfolio adopted pursuant to subdivision (b) in accordance with the "Five-Year Investment Plan, 2002 Through 2006 for the Public Interest Energy Research (PIER) Program (Volume 1)" (P600-01-004a, March 1, 2001).

(d) The term "award," as used in this chapter, may include, but is not limited to, contracts, grants, interagency agreements, loans, purchase orders, and other financial agreements designed to fund public interest research, demonstration, and development projects or programs.

SEC. 3. Section 25620.2 of the Public Resources Code is amended to read:

25620.2. (a) The commission shall administer the program in a manner that is consistent with the purposes of Section 399.7 of the Public Utilities Code, and shall ensure that the program meets all of the following criteria:

(1) Demonstrates a balance of benefits to all sectors that contribute to the funding under Section 381 of the Public Utilities Code.

(2) Addresses key technical and scientific barriers.

(3) Demonstrates a balance between short-term, mid-term, and long-term potential.

(4) Ensures that research currently, previously, or about to be undertaken by research organizations is not unnecessarily duplicated.

(b) To ensure the efficient implementation and administration of the program, the commission shall do both of the following:

(1) Develop procedures for the solicitation of award applications for project or program funding, and to ensure efficient program management.

(2) Evaluate and select programs and projects, based on merit, that will be funded under the program.

(c) The commission may adopt regulations in accordance with the following procedures:

(1) Prepare a preliminary text of the proposed regulation and provide a copy of the preliminary text to any person requesting a copy.

(2) Provide public notice of the proposed regulation to any person who has requested notice of the regulations prepared by the commission. The notice shall contain all of the following:

(A) A clear overview explaining the proposed regulation.

(B) Instructions on how to obtain a copy of the proposed regulations.

(C) A statement that if a public hearing is not scheduled for the purpose of reviewing a proposed regulation, any person may request, not later than 15 days prior to the close of the written comment period, a public hearing conducted in accordance with commission procedures.

(3) Accept written public comments for 30 calendar days after providing the notice required in paragraph (2).

(4) Certify that all written comments were read and considered by the commission.

(5) Place all written comments in a record that includes copies of any written factual support used in developing the proposed regulation, including written reports and copies of any transcripts or minutes in connection with any public hearings on the adoption of the regulation. The record shall be open to public inspection and available to the courts.

(6) Provide public notice of any substantial revision of the proposed regulation at least 15 days prior to the expiration of the deadline for public comments and comment period using the procedures

provided in paragraph (2).

(7) Conduct public hearings, if a hearing is requested by an interested party, that shall be conducted in accordance with commission procedures.

(8) Adopt any proposed regulation at a regularly scheduled and noticed meeting of the commission. The regulation shall become effective immediately unless otherwise provided by the commission.

(9) Publish any adopted regulation in a manner that makes copies of the regulation easily available to the public. Any adopted regulation shall also be made available on the Internet. The commission shall transmit a copy of an adopted regulation to the Office of Administrative Law for publication, or, if the commission determines that printing the regulation is impractical, an appropriate reference as to where a copy of the regulation may be obtained.

(10) Notwithstanding any other provision of law, this subdivision provides an interim exception from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for regulations required to implement Sections 25620.1 and 25620.2 that are adopted under the procedures specified in this subdivision.

(11) This subdivision shall become inoperative on January 1, 2007, unless a later enacted statute deletes or extends that date. However, after January 1, 2007, the commission is not required to repeat any procedural step in adopting a regulation that has been completed before January 1, 2007, using the procedures specified in this subdivision.

SEC. 4. Section 25620.3 of the Public Resources Code is amended to read:

25620.3. (a) The commission may, consistent with the requirements of Section 25620.2, provide awards to any individual or entity to participate in any or all of the planning, developing, executing, implementing, administering, evaluating, and supporting the program. The commission may solicit that expertise using, among other approaches, the methods set forth in Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code. The commission may also solicit for multiple awardees for similar work using, among other approaches, a commission-issued intradepartmental master services agreement. Regardless of the method of making the award, in the event that awards have been made to multiple entities and their subcontractors for similar purposes, the commission may select from among the awardees the particular expertise needed for a specified type of work. Selection of the particular expertise may be based solely on a review of qualifications, including the specific expertise required, availability of the expertise, or access to a resource of special relevance to the work, including, but not limited to, a data base, model, technical facility, or a collaborative or institutional affiliation that would expedite the quality and performance of the work.

(b) If the committee of the commission with oversight of the program determines that it is necessary, in order to ensure that research may commence in a timely manner to assist the development of a product that has significant commercial potential and that could help mitigate potential energy supply shortfalls, it may exempt awards made pursuant to this chapter from any or all of the following:

(1) Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

(2) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, and Sections 6106 and 6106.5 of the Public Contract Code.

(3) Section 10295 of the Public Contract Code.

(4) Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of Title 2 of the Government Code.

(5) Subdivisions (f) and (g) of Section 25620.5.

(c) The commission may provide an award to a project or program that includes a group of related projects, or to a party who aggregates projects that directly benefit from the award.

(d) The commission may establish multiparty agreements. In a multiparty agreement, the commission may be a signatory to a common agreement among two or more parties. These agreements include, but are not limited to, cofunding, leveraged research, collaborations, and membership arrangements. If the commission enters into these agreements, it shall be a party to these agreements and may share in the roles, responsibilities, risks, investments, and results.

(e) The commission may issue awards that include the ability to make advance payments to federal agencies, national laboratories, or other state agencies when those entities are subcontractors to a binding and enforceable prime contract with the commission that provides for specific performance milestones and the ability to assign tasks on a work authorization basis.

(f) The commission may delegate approval of awards up to one million dollars (\$1,000,000) to the executive director, to the committee with oversight of the program, or to their designee.

(g) The commission may delegate to a public entity, in any award, its authority for a portion of the program, and any or all of the planning, developing, executing, implementing, administering, evaluation, and supporting functions. This delegation of authority includes the authority to conduct a solicitation using reasonable competitive bidding methods, reasonable sole and single source methods, or the sole and single source authorities of the program for subcontracts or agreements and the execution of those agreements.

SEC. 5. Section 25620.5 of the Public Resources Code is amended to read:

25620.5. (a) The commission may solicit applications for awards, using a sealed competitive bid, competitive negotiation process, interagency agreement, single source, or sole source method. When scoring teams are convened to review and score proposals, the scoring teams may include persons not employed by the commission, as long as employees of the state constitute no less than 50 percent of the membership of the scoring team. A person participating on a scoring team may not have any conflict of interest with respect to the proposal before the scoring team.

(b) A sealed bid method may be used when goods and services to be acquired can be described with sufficient specificity so that bids can be evaluated against specifications and criteria set forth in the solicitation for bids.

(c) The commission may use a competitive negotiation process in any of the following circumstances:

(1) Whenever the desired award is not for a fixed price.

(2) Whenever project specifications cannot be drafted in sufficient detail so as to be applicable to a sealed competitive bid.

(3) Whenever there is a need to compare the different price, quality, and structural factors of the bids submitted.

(4) Whenever there is a need to afford bidders an opportunity to revise their proposals.

(5) Whenever oral or written discussions with bidders concerning the technical and price aspects of their proposals will provide better results to the state.

(6) Whenever the price of the award is not the determining factor.

(d) The commission may establish interagency agreements.

(e) The commission may provide awards on a single source basis by choosing from among two or more parties or by soliciting multiple applications from parties capable of supplying or providing similar goods or services. The cost to the state shall be reasonable and the commission may only enter into a single source agreement with a particular entity if the commission determines that it is in the state's best interests.

(f) The commission, in accordance with subdivision (g), may provide awards on a sole source basis when the cost to the state is reasonable when, in consultation with the Department of General Services, the commission makes any of the following determinations concerning sole source contracts:

(1) The proposal was unsolicited and meets the evaluation criteria of this chapter.

(2) The expertise, service, or product is unique.

(3) The urgency of the need for the information or deliverable is such that a competitive solicitation would frustrate timely performance.

(4) The contract funds the next phase of a multiphased proposal and the existing agreement is being satisfactorily performed.

(5) When it is determined by the commission to be in the best interests of the state.

(g) The commission may not use a sole source basis for a contract pursuant to subdivision (f), unless both of the following conditions are met:

(1) The commission, at least 30 days prior to taking an action pursuant to subdivision (f), notifies the Joint Legislative Budget Committee, in writing, of its intent to take the proposed action.

(2) The Joint Legislative Budget Committee either approves or does not disapprove the proposed action within 30 days from the date of notification required by paragraph (1).

(h) The commission shall submit semiannual reports to the Legislative Analyst and to the appropriate fiscal and policy committees of the Legislature that review bills relating to energy and public utilities. The reports shall contain an evaluation of the progress and status of the implementation of this section. In addition, the reports shall identify each instance in which an exemption authorized by subdivision (b) of Section 25620.3 was utilized.

(i) The provisions of this section are severable. If any provision of this section or its application is held to be invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. Section 25620.7 of the Public Resources Code is amended to read:

25620.7. The commission may contract for, or through interagency agreement obtain, technical, scientific, or administrative services from one or more entities, to support the program. Funding for this purpose shall be made from money in the Public Interest Research, Development, and Demonstration Fund.

SEC. 7. Section 25620.9 is added to the Public Resources Code, to read:

25620.9. (a) Not later than six months after the enactment of this section, the commission shall designate a panel of independent experts with special expertise in public interest research, development, and demonstration programs. The panel shall conduct a comprehensive evaluation of the program established pursuant to this chapter. The evaluation shall include a review of the public value of programs established pursuant to this chapter, including, but not

limited to, the monetary and nonmonetary benefits to public health and the environment, and the benefit of providing funds for technology development that would otherwise not be funded.

(b) Not later than 18 months after the enactment of this section, the panel designated pursuant to subdivision (a) shall submit a preliminary report to the Governor and to the Legislature on its findings and recommendations on the implementation of the program established pursuant to this chapter. The panel, not later than 30 months after the enactment of this section, shall submit a final report to the Governor and to the Legislature, including any additional findings and recommendations regarding implementation of the program.

(c) This section shall remain in effect only until July 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 8. Section 25648 of the Public Resources Code is amended to read:

25648. (a) The commission shall make loans, and research contract and grant awards, for purposes of making existing energy technologies more efficient, cost-effective, and environmentally acceptable, and to research, develop, demonstrate, and commercialize new, cost-effective alternative sources of energy, technologies that displace conventional fuels, and energy efficiency and conservation devices.

(b) In selecting projects, the commission shall consider, but is not limited to, the list of opportunity technologies developed in the most current energy development report produced pursuant to Section 25604, or a subset of those opportunity technologies.

(c) The commission shall select the projects through competitive bid procedures, including, but not limited to, invitations for bids, requests for proposals, program opportunity notices, and multistep bids using preapplications, by demonstrating the need for sole source awards, or by evaluating small business grant and loan applications.

(d) The criteria for the selection of projects shall include, but not be limited to, all of the following factors:

(1) The potential of the project to reduce energy consumption or provide an alternative source of energy.

(2) The financial, technical, and management strength of the project applicant.

(3) The near-term and long-term feasibility of the project.

(4) The ability of the project technology to be used throughout California.

(5) The potential of the project for promoting diverse, secure, and resilient energy supplies.

(6) The potential of the project to displace petroleum.

(7) The potential of the project for reducing adverse environmental impacts.

(8) The potential of the project to stimulate economic development, employment, and tax revenues for California.

(9) The potential of the project for reducing short-term and long-term energy costs for the ratepayers of California.

(10) The need of the project for state financing.

(11) The ability of the project to attract private and other public investment.

(12) The investment payback period for the project.

(13) The probability of success in overcoming the risk of the project.

(14) The potential for stimulating small business competition in the field of alternative energy development.

(15) The ability of the project to generate needed community

economic development for participating local jurisdictions.

(16) The extent of the applicant's financial participation.

(17) The degree of innovation of the project.

(18) Whether the project is, in general, consistent with the energy policies of California regarding the energy technologies and priorities as set forth in the biennial report of the commission.

(19) The cost of the project.

(e) The commission shall apply the criteria specified in subdivision (d) consistently within each competitive bid solicitation.

(f) Awards provided pursuant to this chapter are not subject to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 9. Section 25648.4 of the Public Resources Code is amended to read:

25648.4. The commission shall apply this chapter to research, development, demonstration, and commercialization projects that are not subject to Chapter 6 (commencing with Section 3800) of Division 3 and Chapter 7.1 (commencing with Section 25620), and Chapter 7.8 (commencing with Section 25680).

SEC. 10. Section 25684 of the Public Resources Code is amended to read:

25684. (a) The commission shall make loans and repayable research contracts, and may provide primary research contracts funding from the account for the purposes of making energy technologies more efficient and cost-effective, and to develop new cost-effective alternative sources of energy. The commission shall select recipients through a procedure using an invitation for bids or a request for proposals. Each invitation for bids and request for proposals shall specify the criteria to be used in selecting projects for financing. The criteria shall include, but not be limited to, all of the following factors:

(1) The potential of the project to reduce consumption and increase the efficiency of nonrenewable energy sources and systems.

(2) The financial, technical, and management strength of the project applicant.

(3) The near-term and long-term feasibility of the project.

(4) The ability of the project technology to be used on other applications throughout California.

(5) The potential of the project for promoting diverse, secure, and resilient energy supplies.

(6) The potential of the project for reducing adverse environmental impacts.

(7) The potential of the project to stimulate economic development, employment, and tax revenues for California.

(8) The potential of the project for reducing short-term and long-term energy costs for the ratepayers of California.

(9) The need of the project for state financing.

(10) The ability of the project to garner private investment.

(11) The investment payback period for the project.

(12) The probability of success in overcoming the risk of the project.

(13) The potential for stimulating small business competition in the field of alternative energy development.

(14) The ability of the project to generate needed community economic development for participating local jurisdictions.

(15) The extent of the applicant's financial participation.

(16) The degree of innovation of the project.

(17) Whether the project is in general agreement with the energy policies of California regarding the energy technologies and

priorities as set forth in the biennial report of the commission.

(b) Awards provided pursuant to this chapter are not subject to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 11. Section 381 of the Public Utilities Code is amended to read:

381. (a) To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage. This rate component shall fall within the rate levels identified in subdivision (a) of Section 368.

(b) The commission shall allocate funds collected pursuant to subdivision (a), and any interest earned on collected funds, to programs that enhance system reliability and provide in-state benefits as follows:

(1) Cost-effective energy efficiency and conservation activities.

(2) Public interest research and development not adequately provided by competitive and regulated markets.

(3) In-state operation and development of existing and new and emerging renewable resource technologies defined as electricity produced from other than a conventional power source within the meaning of Section 2805, provided that a power source utilizing more than 25 percent fossil fuel may not be included.

(c) The Public Utilities Commission shall order the respective electrical corporations to collect and spend these funds, as follows:

(1) Cost-effective energy efficiency and conservation activities shall be funded at not less than the following levels commencing January 1, 1998, through December 31, 2001: for San Diego Gas and Electric Company a level of thirty-two million dollars (\$32,000,000) per year; for Southern California Edison Company a level of ninety million dollars (\$90,000,000) for each of the years 1998, 1999, and 2000; fifty million dollars (\$50,000,000) for the year 2001; and for Pacific Gas and Electric Company a level of one hundred six million dollars (\$106,000,000) per year.

(2) Research, development, and demonstration programs to advance science or technology that are not adequately provided by competitive and regulated markets shall be funded at not less than the following levels commencing January 1, 1998, through December 31, 2011: for San Diego Gas and Electric Company a level of four million dollars (\$4,000,000) per year; for Southern California Edison Company a level of twenty-eight million five hundred thousand dollars (\$28,500,000) per year; and for Pacific Gas and Electric Company a level of thirty million dollars (\$30,000,000) per year.

(3) In-state operation and development of existing and new and emerging renewable resource technologies shall be funded at not less than the following levels on a statewide basis: one hundred nine million five hundred thousand dollars (\$109,500,000) per year for each of the years 1998, 1999, and 2000, and one hundred thirty-six million five hundred thousand dollars (\$136,500,000) for the year 2001. To accomplish these funding levels over the period described herein the San Diego Gas and Electric Company shall spend twelve million dollars (\$12,000,000) per year, the Southern California Edison Company shall expend no less than forty-nine million five hundred thousand dollars (\$49,500,000) for the years 1998, 1999, and 2000, and no less than seventy-six million five hundred thousand dollars (\$76,500,000) for the year 2001, and the Pacific Gas and

Electric Company shall expend no less than forty-eight million dollars (\$48,000,000) per year through the year 2001. Additional funding not to exceed seventy-five million dollars (\$75,000,000) shall be allocated from moneys collected pursuant to subdivision (d) in order to provide a level of funding totaling five hundred forty million dollars (\$540,000,000).

(4) Up to fifty million dollars (\$50,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to implementation of subdivision (a) of Section 374. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(5) Up to ninety million dollars (\$90,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to contractual arrangements in the Southern California Edison service territory stemming from the Biennial Resource Planning Update auction. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(6) ~~To accomplish the~~ The funding of in-state operation and development of existing and new and emerging renewable resources technologies i ~~n accordance with the intent of Section 399, the San Diego Gas and Electric Company shall spend no less than thirteen million nine hundred thousand dollars (\$13,900,000) per year from January 1, 2002, to December 31, 2011, inclusive, the Southern California Edison Company shall spend no less than sixty five million three hundred thousand dollars (\$65,300,000) per year from January 1, 2002, to December 31, 2011, inclusive, and the Pacific Gas and Electric Company shall spend no less than fifty five million eight hundred thousand dollars (\$55,800,000) per year from January 1, 2002, to December 31, 2011, inclusive.~~
shall be made available pursuant to Section 399.8.

(d) Notwithstanding any other provisions of this chapter, the commission may allow entities subject to its jurisdiction to extend the period for competition transition charge collection up to three months beyond its otherwise applicable termination of December 31, 2001, or to allow these entities to impose an alternative nonbypassable system benefits charge, so as to ensure that the aggregate portion of the research, environmental, and low-income funds allocated to renewable resources shall equal five hundred forty million dollars (\$540,000,000) and that the costs specified in paragraphs (3), (4), and (5) of subdivision (c) are collected.

(e) Each electrical corporation shall allow customers to make voluntary contributions through their utility bill payments as either a fixed amount or a variable amount to support programs established pursuant to paragraph (3) of subdivision (b). Funds collected by electrical corporations for these purposes shall be forwarded in a timely manner to the appropriate fund as specified by the commission.

(f) For purposes of this article, "emerging renewable technology" means a new renewable technology, including, but not limited to, fuel cells using renewable fuels and photovoltaic technology, that is determined by the State Energy Resources Conservation and Development Commission to be emerging from research and development and that has significant commercial potential.

SEC. 12. Section 383.5 of the Public Utilities Code is amended to read:

383.5. (a) It is the intent of the Legislature in establishing this program, to increase the amount of renewable electricity generated per year, so that it equals at least 17 percent of the total electricity generated for consumption in California per year by 2006.

(b) As used in this section, the following terms have the following meaning:

(1) "In-state renewable electricity generation facility" means a facility using biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation facility of 30 megawatts or less, ~~waste tire, digester gas, landfill gas, and municipal solid waste~~ digester gas, and landfill gas generation technologies, as described in the report, defined in paragraph (2), including any additions or enhancements thereto, that are located in this state or located near the border of this state and with the first point of connection to the Western States Coordinating Council (WSCC) transmission system located within this state. "In-state renewable electricity generation facility" also includes a facility using ocean thermal, tidal current, and wave energy generation technologies, located within the state's territorial boundaries.

(2) "Report" means the report entitled "Investing in Renewable Electricity Generation in California" (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the State Energy Resources Conservation and Development Commission.

(3) *"Nonenergy attributes of renewable electricity" means the bundle of all attributes or externalities, including the fuel, avoided emissions, or any other characteristic of in-state renewable electricity generation, except the power attributes of electricity generated at a specified facility. These nonenergy attributes or externalities include, but are not limited to, avoided emissions of pollutants to the water, land, or air, such as emissions of oxides of nitrogen, oxides of sulfur, carbon monoxide, and any other pollutant that is now or may in the future, be regulated under pollution control laws, and emissions of greenhouse gases.*

(4) *"Energy attributes of renewable electricity" means the energy capacity, reliability, or power quality attributes of electricity, excluding the nonenergy attributes or externalities of renewable electricity.*

(c) (1) Twenty percent of the funds collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for programs that are designed to improve the competitiveness of existing in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide.

(2) Any funds used to support in-state renewable electricity generation facilities pursuant to this subdivision shall be expended in accordance with the provisions of the report, subject to all of the following requirements:

~~—(A) Funding for existing renewable electricity generation facilities shall be grouped into two technology tiers, as follows:~~

~~—(i) Fifteen percent of the money shall be used to fund first tier technologies, including biomass and solar thermal electric technologies.~~

~~—(ii) Five percent of the money shall be used to fund second tier wind technologies.~~

~~—(iii)~~

(A) Of the funding for existing renewable electricity generation facilities available pursuant to this subdivision, 75 percent shall be used to fund first tier technologies, including biomass and solar electric technologies and 25 percent shall be used to fund second tier wind technologies.

(B) The State Energy Resources Conservation and Development Commission shall reexamine the tier structure as proposed in the

report and adjust the structure to reflect market conditions. The State Energy Resources Conservation and Development Commission shall also consider inflation when adjusting the structure.

~~—(B)—~~

(C) The State Energy Resources Conservation and Development Commission shall establish a cents per kilowatthour production incentive, not to exceed the payment caps per kilowatthour established in the report, as those payment caps are revised in guidelines adopted by the commission, representing the difference between target prices and the market clearing price for electricity, if sufficient funds are available. If there are insufficient funds in any payment period to pay either the difference between the target and market price or the payment caps, production incentives shall be based on the amount determined by dividing available funds by eligible generation. The market price for electricity shall be determined by the State Energy Resources Conservation and Development Commission based on the energy prices paid to nonutility power generators as provided in Section 390, or on otherwise available measures of market price. For the first tier technologies, the State Energy Resources Conservation and Development Commission shall establish a time-differentiated incentive structure that encourages plants to run the maximum feasible amount of time and that provides a higher incentive when the plants are receiving the lowest price.

~~—(C)—~~

(D) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the State Energy Resources Conservation and Development Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:

(i) Is sold at monthly average rates equal to or greater than the applicable target price, as determined by the State Energy Resources Conservation and Development Commission.

(ii) Is that portion of electricity generation attributable to the use of qualified agricultural biomass fuel, for a facility that is receiving fuel-based incentives through the Agricultural Biomass-to-Energy Incentive Grant Program established pursuant to Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code. Notwithstanding subdivision (f) of Section 1104 of the Food and Agricultural Code, facilities that receive funding from the Agricultural Biomass-to-Energy Incentive Grant Program are eligible to receive funding pursuant to this subdivision.

(iii) Is used onsite or is sold to customers in a manner that does not include independent metering of the electricity generated, upon which production incentives may be based.

(d) (1) Fifty percent of the money collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for programs designed to foster the development of new in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that operation of those facilities will provide.

(2) Any funds used for new in-state renewable electricity generation facilities pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) Funds shall be allocated for proposed projects based on a competitive solicitation process whereby production incentives, not to exceed a maximum amount, as specified by the State Energy Resources Conservation and Development Commission, are awarded to the lowest bidders, provided that not more than 25 percent of the funds allocated in any competitive solicitation pursuant to paragraph (1)

may be awarded to a single project.

(B) Funds expended for production incentives shall be paid over a five-year period commencing on or after the date that a project begins electricity production, provided that the project shall be operational within four years after the date of the competitive solicitation in which the project was allocated funding. A project that becomes operational later than four years after the date of the competitive solicitation in which the project was allocated funding may not receive payments except upon the extension and reapproval of its award by the State Energy Resources Conservation and Development Commission, and may not receive any payments for energy generated beyond the date nine years after the date of the competitive solicitation, *except upon the extension of its award pursuant to this subparagraph*. The State Energy Resources Conservation and Development Commission may extend and reapprove a project award if it finds that the project will not be operational within the expected four-year period, due to circumstances specific to the project and beyond the control of the project developer. Upon making this finding, the State Energy Resources Conservation and Development Commission shall pay production incentives over a five-year period, commencing on the date of operation, provided that the date that a project begins electricity production may not extend beyond six years after the date of the applicable competitive solicitation or January 1, 2007, whichever is later.

~~(C) The State Energy Resources Conservation and Development Commission may determine as part of a solicitation that a facility that does not meet the definition of "in-state renewable generation facility" solely because it is located outside the state is eligible for funding from this subdivision if it satisfies both of the following requirements:~~

~~—(i) It is located so that it is or will be connected to the WSCC grid.~~

~~—(ii) It is developed with guaranteed contracts to sell its generation to end use customers within California, or to marketers that provide this guarantee for resale of the generation, for a period at least equal to the amount of time it receives incentive payments pursuant to this subdivision.~~

~~—(D) Facilities that are eligible to receive funding pursuant to this subdivision shall be registered in accordance with criteria developed by the State Energy Resources Conservation and Development Commission and those facilities may not receive payments for any electricity produced that has any of the following characteristics:~~

~~(i) Is sold under an existing long-term contract with an existing in-state electrical corporation if the contract includes fixed energy or capacity payments, except for that electricity that satisfies the provisions of subparagraph (C) of paragraph (1) of subdivision (c) of Section 399.6.~~

~~(ii) Is used onsite or is sold to customers in a manner that does not include independent metering of the electricity generated, upon which production incentives may be based.~~

~~(iii) Is produced by a facility that is owned by an electrical corporation or a local publicly owned electric utility as defined in subdivision (d) of Section 9604.~~

~~(iv) Is a hydroelectric generation project that will require a new or increased appropriation of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.~~

~~—(E)—~~

(D) Eligibility to compete for funds or to receive funds shall not be contingent upon the location or nature of the power purchaser.

~~—(F)—~~

(E) The State Energy Resources Conservation and Development Commission may require applicants competing for funding to post a forfeitable bid bond or other financial guaranty as an assurance of the applicant's intent to move forward expeditiously with the project proposed. The amount of any bid bond or financial guaranty may not exceed 10 percent of the total amount of the funding requested by the applicant.

~~—(G)—~~

(F) In awarding funding, the State Energy Resources Conservation and Development Commission may provide preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(3) Repowered existing facilities shall be eligible for funding under this subdivision if the capital investment to repower the existing facility equals at least 80 percent of the value of the repowered facility.

(4) Facilities engaging in the combustion of municipal solid waste or tires are not eligible for funding under this subdivision.

(e) (1) Seventeen and one-half percent of the money collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.

(2) Any funds used for emerging technologies pursuant to this subdivision shall be expended in accordance with the report, subject to all of the following requirements:

(A) Funding for emerging technologies shall be provided through a competitive, market-based process that shall be in place for a period of not less than five years, and shall be structured so as to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program. ~~Notwithstanding subparagraphs (B), (C), and (D), up to 15 percent of the funds allocated by this subdivision may be used by the State Energy Resources Conservation and Development Commission to establish programs with alternative program structures, as long as the programs have goals consistent with this subparagraph. These programs may include incentives for in-state manufacturing of renewable energy systems eligible for funding under this subdivision provided that these programs yield tangible benefits to California ratepayers that contribute to the Renewable Resources Trust Fund.~~

(B) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to subparagraph (C), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical capacity of the system measured in watts, or the amount of electricity production of the system, measured in kilowatthours. Incentives shall be limited to a maximum percentage of the system price, as determined by the State Energy Resources Conservation and Development Commission.

(C) Eligible distributed emerging technologies are photovoltaic, solar thermal electric, fuel cell technologies that utilize renewable fuels, and wind turbines of not more than 50 kilowatts rated electrical capacity per customer site, and other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the State Energy Resources Conservation and Development Commission. Eligible electricity

generating systems are intended primarily to offset part or all of the consumer's own electrical energy demand, and shall not be owned by electrical corporations or local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to Section 381 and contributing funds to support programs under this section. All eligible electricity generating system components shall be new and unused, shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical output. Systems and their fuel resources shall be located on the same premises of the end-use consumer where the consumer's own electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid in California. The State Energy Resources Conservation and Development Commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation.

(D) The State Energy Resources Conservation and Development Commission may limit the amount of funds available for any system or project of multiple systems and reduce the level of funding for any system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.

(E) In awarding funding, the State Energy Resources Conservation and Development Commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(f) (1) Ten percent of the money collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used to provide customer credits for purchases of the ~~renewable~~ *nonenergy* attributes of renewable ~~nonenergy~~ *energy produced by registered generating facilities* ~~electricity produced by registered in-state renewable electricity generation facilities, and the State Energy Resources Conservation and Development Commission may require that retail customers purchase a like quantity of electricity from the same provider in order to qualify for customer credits~~ .

(2) Any funds used for customer credits pursuant to this subdivision shall be expended, as provided in the report, subject to all of the following requirements:

(A) Customer credits shall be awarded to California retail customers located in the service territory of an electrical corporation that is subject to Section 381 ~~and~~

~~that is contributing funds to support programs under this section, and who are that is purchasing~~ qualifying ~~renewable aspects of renewable electric power~~

~~nonenergy attributes of renewable electricity~~ through transactions traceable to specific generation sources by any auditable contract trail or equivalent that provides commercial verification that the ~~renewable aspect~~ *nonenergy attributes* of the electricity source claimed ~~has~~ have been sold once and only once to a retail customer. ~~Credits may be given without regard to whether the power supplier is also receiving funds under any other subdivision of this section. The State Energy Resources Conservation and Development Commission may require that retail customers purchase a like quantity of electricity from the same provider in order to qualify for customer credits.~~

(B) Credits awarded pursuant to this paragraph may be paid

directly to electric service providers, energy marketers, aggregators, or generators if those persons or entities account for the credits on the recipient customer's bills. Credits may not exceed one and one-half cents (\$0.015) per kilowatthour. Credits awarded to members of the combined class of customers, other than residential and small commercial customers, may not exceed one thousand dollars (\$1,000) per customer per calendar year. In no event may more than ~~thirteen million five hundred thousand dollars (\$13,500,000)~~ 10 percent of the total customer incentive funds be awarded to members of the combined class of customers other than residential and small commercial customers.

(C) The State Energy Resources Conservation and Development Commission shall develop criteria and procedures for the registration of energy providers and for the identification of energy purchasers who are eligible to receive funds pursuant to this paragraph through a process consistent with this paragraph. These criteria and procedures shall apply only to funding eligibility and may not extend to other renewable marketing claims.

(D) The commission shall notify the State Energy Resources Conservation and Development Commission in writing within 10 days of revoking or suspending the registration of any electric service provider pursuant to paragraph (4) of subdivision (b) of Section 394.25.

(g) Two and one-half percent of the money collected pursuant to paragraph (6) of subdivision (c) of Section 381 shall be used in accordance with the report to promote renewable energy and to disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

(h) (1) The State Energy Resources Conservation and Development Commission shall adopt guidelines governing the funding programs authorized under this section, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this paragraph by the act amending this section during the 2002 portion of the 2001-02 Regular Session are declaratory of, and not a change in existing law.

(2) Funds to further the purposes of this section may be committed for multiple years.

(3) Awards made pursuant to this section are grants, subject to appeal to the State Energy Resources Conservation and Development Commission upon a showing that factors other than those described in the guidelines adopted by the State Energy Resources Conservation and Development Commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and registered to receive, payments or awards, including satisfying conditions specified by the State Energy Resources Conservation and Development Commission, shall not constitute the rendering of goods, services, or a direct benefit to the State Energy Resources Conservation and Development Commission.

(i) The State Energy Resources Conservation and Development Commission shall report to the Legislature on or before May 31, 2000, and on or before May 31 of every second year thereafter, regarding the results of the mechanisms funded pursuant to this section.

Reports prepared pursuant to this subdivision shall include a description of the allocation of funds among existing, new and emerging technologies; the allocation of funds among programs, including consumer-side incentives; and the need for the reallocation of money among those technologies. The reports shall also address the allocation of funds from interest on the accounts described in this section, and money in the accounts described in subdivision (e) of Section 381. Notwithstanding subdivisions (c), (d), (e), (f), and (g) of this section, money may be reallocated without further legislative action among existing, new, and emerging technologies and consumer-side programs in a manner consistent with the report and with the latest report provided to the Legislature pursuant to this subdivision.

(j) The State Energy Resources Conservation and Development Commission may expend up to 1 percent of the money collected pursuant to paragraph (6) of subdivision (c) of Section 381 for statutory ~~costs related to the State Energy Resources Conservation and Development Commission's implementation of a renewables portfolio standard program if that program is enacted during the 2002 portion of the 2001-02 Regular Session.~~

costs of implementing and administering a renewable portfolio standard which are imposed on the State Energy Resources Conservation and Development Commission by Senate Bill 532 of the 2001-02 Regular Session.

SEC. 13. Section 394.25 of the Public Utilities Code is amended to read:

394.25. (a) The commission may enforce the provisions of Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against electric service providers as if those electric service providers were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section grants the commission jurisdiction to regulate electric service providers other than as specifically set forth in this part. Electric service providers shall continue to be subject to the provisions of Sections 2111 and 2112. Upon a finding by the commission's executive director that there is evidence to support a finding that the electric service provider has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the electric service provider in writing and notice an expedited hearing on the suspension or revocation of the electric service provider's registration to be held within 30 days of the notification to the electric service provider of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

(b) An electric service provider may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.

(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the electric service provider or its employees, agents, or representatives, or to disadvantage retail electric customers.

(3) Where the commission finds that there is evidence that the electric service provider is not financially or operationally capable of providing the offered electric service.

(4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 394.

(c) Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the electric service provider to cease serving customers within the boundaries of investor-owned electric corporations, and the affected customers shall be served by the electrical corporation until the time when they may select service from another service provider. Customers shall not be liable for the payment of any early termination fees or other penalties to any electric service provider under the service agreement if the serving electric service provider's registration is suspended or revoked.

(d) The commission shall require any electric service provider whose registration is revoked pursuant to paragraph (4) of subdivision (b) to refund all of the customer credit funds that the electric service provider received from the State Energy Resources Conservation and Development Commission pursuant to paragraph (1) of subdivision (f) of Section 383.5. The repayment of these funds shall be in addition to all other penalties and fines appropriately assessed the electric service provider for committing those acts under other provisions of law. All customer credit funds refunded under this subdivision shall be deposited in the Renewable Resource Trust Fund for redistribution by the State Energy Resources Conservation and Development Commission pursuant to Section 383.5. This subdivision may not be construed to apply retroactively.

SEC. 14. Section 445 of the Public Utilities Code is amended to read:

445. (a) The Renewable Resource Trust Fund is hereby created in the State Treasury.

(b) The following accounts are hereby created within the Renewable Resource Trust Fund:

- (1) The Existing Renewable Resources Account.
- (2) New Renewable Resources Account.
- (3) Emerging Renewable Resources Account.
- (4) Customer-Credit Renewable Resources Account.
- (5) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended for the state's administration of this article only upon appropriation by the Legislature in the annual Budget Act.

(d) Notwithstanding Section 383, that portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and emerging renewable resource technologies, pursuant to paragraphs (3) and (6) of subdivision (c) of Section 381, shall be transmitted to the State Energy Resources Conservation and Development Commission at least quarterly for deposit in the Renewable Resource Trust Fund. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant to subdivision (b) in proportions designated by the State Energy Resources Conservation and Development Commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the State Energy Resources Conservation and Development Commission without regard to fiscal year for the purposes enumerated in Section 383.5.

(e) Upon notification by the State Energy Resources Conservation

and Development Commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in Section 383.5. The eligibility of each award shall be determined solely by the State Energy Resources Conservation and Development Commission based on the procedures it adopts under subdivision (h) of Section 383.5. Based on the eligibility of each award, the State Energy Resources Conservation and Development Commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. Eligible awards submitted by the State Energy Resources Conservation and Development Commission to the Controller shall be accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes enumerated in Section 383.5; and an accounting of future costs associated with any award or group of awards known to the State Energy Resources Conservation and Development Commission to represent a portion of a multiyear funding commitment.

(f) The State Energy Resources Conservation and Development Commission may transfer funds between accounts for cash-flow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts. The State Energy Resources Conservation and Development Commission shall examine the cash-flow in the respective accounts on an annual basis, and shall annually prepare and submit to the Legislature a report that describes the status of account transfers and repayments.

(g) The State Energy Resources Conservation and Development Commission shall, on a quarterly basis, report to the Legislature on the implementation of this article. Those quarterly reports shall be submitted to the Legislature not more than 30 days after the close of each quarter and shall include information describing the awards submitted to the Controller for payment pursuant to this article, the cumulative commitment of claims by account, the relative demand for funds by account, a forecast of future awards, and other matters the State Energy Resources Conservation and Development Commission determines may be of importance to the Legislature.

(h) The Department of Finance, commencing March 1, 1999, shall conduct an independent audit of the Renewable Resource Trust Fund and its related accounts annually, and provide an audit report to the Legislature not later than March 31 of each year for which this article is operative. The Department of Finance's report shall include information regarding revenues, payment of awards, reserves held for future commitments, unencumbered cash balances, and other matters that the Director of Finance determines may be of importance to the Legislature.